



BAY FM ANNUAL COMPLIANCE REPORT

MARCH 2019

2017/2018 ANNUAL COMPLIANCE REPORT

CAMPUS BAY FM BROADCASTING AS BAY FM

Licence Period: 02 July 2014 to 01 July 2019

1. PREFACE

The Independent Communications Authority of South Africa (the Authority) has a statutory mandate in terms of the Constitution¹, the ICASA Act², the Electronic Communications Act³ (ECA) and the Broadcasting Act⁴ to regulate broadcasting activities in South Africa in the public interest. Among the responsibilities of the Authority is the task to ensure compliance by broadcasting service Licensees with the terms and conditions of their licence and any relevant legislation and/or regulations.

The purpose of the report is to give an account of Campus Bay FM's compliance with the terms and conditions, as set out in its licence, for the 2017/2018 financial year. Aspects of compliance that are measured comprise of Geographic Coverage, Community Participation, Programming, Format, News and Information, Local Content Obligations, Language(s), South African Music Regulations, Regulations Regarding Standard Terms and Conditions.

2. BACKGROUND

In July 2014, the Authority renewed a five-year service licence⁵ belonging to an entity called Campus Bay FM for the provision of a community sound broadcasting service known as Bay FM. The Licensee's mandate is to provide services to the geographic community of all languages particularly those in the age group 16 to 24 years. Bay FM's service licence expires in July 2019 and a letter⁶ to remind the Licensee of the due renewal has been sent.

¹ The Constitution of the Republic of South Africa, No 108 of 1996

² Act No. 13 of 2000, as amended

³ Act No. 36 of 2005

⁴ Act No. 4 of 1999

⁵ Appendix A: Bay FM's Broadcasting Service Licence

⁶ Appendix B: Renewal Letter to Bay FM

3. COMPLIANCE ASSESSMENT

3.1 Licensee

Clause 1 of the Licence provides that:

"The Licence is issued to:

- 1.1 Name of Entity: Campus Bay FM*
- 1.2 Name of the Station: Bay FM*
- 1.3 Control of the Licensee: Control shall vest in the Board of Directors of a Non Profit Company known as Campus Bay FM."*

The reports submitted by the Licensee to the Authority confirm that the Licensee is mostly known by the name of the Station and that all branding is for Bay FM. Active monitoring of the Licensee's programme recordings also confirmed that the name is still as per clause 1.2 of the licence.

During the period under review the Authority did not receive any communication from the Licensee indicating a change in the control of Bay FM.

The Licensee complies with clause 1 and the sub-clauses of the licence.

3.2 Licence Area

Clause 3 of the licence prescribes as follows:

"The Licensee shall provide services to Nelson Mandela Bay Municipality which includes Port Elizabeth, Uitenhage, Despatch, Jeffreys Bay, Humansdorp, Patensie and the surrounding areas in the Eastern Cape Province as set out in the Licensee's radio frequency spectrum licence⁷."

Bay FM's coverage areas is still as prescribed in the licence document. Furthermore, in the year under review, the Authority did not receive reports or

⁷ Appendix C: Bay FM's Frequency Spectrum License

complaints indicating that the radio station has interfered in areas that are outside its coverage area.

The Licensee complies with clause 3 of its licence.

3.3 Community

Clause 4.1 of the schedule to the licence gives the following prescription:

"The Licensee shall provide services to a geographic community of all languages in particular those in the age group 16 to 24 years residing within the geographic coverage area specified herein".

Bay FM submits that they provide broadcasting service as prescribed by the licence document.

The Authority's monitoring exercise identified that Bay FM's programming profile is indeed targeted at the age group specified by the clause. The nature of music selection and content in programming confirmed that the Licensee mostly targets this age group.

Clause 4.2 of the schedule to the licence provides that:

"The Licensee shall provide for the participation of community members in the affairs of the station in the following ways:

4.2.1 The Licensee shall hold at least two (2) meetings annually with its community on programming and programme-related matters for the selection and provision of programmes.

Bay FM failed to submit proof of meetings when requested. The Authority's letter dated 20 February 2018⁸ was specific to mention that the Licensee must submit proof of their 2 meeting with the community. This is an indication that the Licensee failed to hold the two meetings prescribed by clause 4.2.1.

⁸ Appendix D: Letter dated 20 February 2018 sent to Bay FM

On the basis that the Licensee could not produce proof that they convened the two meetings, the Authority concludes that Bay FM failed to comply with clause 4.2.1.

4.2.2 The Licensee shall furnish the Authority with proof of such meetings as well as the attendance thereof by members of the community.

Bay FM could not submit the required proof for meetings convened during the year under review.

Bay FM failed to comply with sub-clause 4.2.2 of the schedule to its licence.

While 4.2.3 prescribes that:

"The Licensee shall hold Annual General Meetings (AGM) for the following purposes:

4.2.3.1 To provide feedback on the Licensee's compliance with licence conditions;

4.2.3.2 To provide feedback on the Licensee's operational and financial performance; and

4.2.3.3 To elect members of the controlling structure, e.g. Board of Directors, Trustees etc. subject to the licensee's founding documents".

Bay FM failed to submit proof that they convened their AGM in the year under review. The Authority's records show that the Licensee last held its Annual General Meeting in 2013. The Authority will attend to the Licensee's failure to engage its community through the three prescribed meetings.

Bay FM failed to comply with clause 4.2.3 and the sub clauses thereto.

3.4 Programming

Clause 5.1 of the schedule to the licence stipulates that:

"The Licensee shall provide programming as follows:

5.1.1 Local News and Information: *"The Licensee shall broadcast a total of forty (40) minutes of news per day, 60% of which shall be news from the community produced by the station on issues affecting the community."*

Bay FM submits in their log sheets⁹ that they carry at least 43 minutes of news per day. According to the Licensee's log sheets, none of their news content is produced by the Licensee as prescribed by clause 5.1.1.

The Authority's monitoring exercise found that Bay FM schedules at least 4 full news bulletins per weekday and each would last for approximately 4 minutes. No news bulletins were observed over the weekend. In essence, Bay FM broadcasts at least 16 minutes of news on weekdays only and none of them is produced by the Licensee. The Licensee's news output is dominated by news of national importance and relevance and at least 20% of their news output is local news.

Among the news stories covered for the period under review were excerpts from certain broadcasts, as follows:

- *"The democratic Alliance says it has noted the decision by the ANC's National Executive Committee to recall President Jacob Zuma. Party Leader, Mmusi Maimane, said in a statement that this recall is an internal ANC resolution and nothing more. According to Maimane it has no effect on Jacob Zuma's current status as president of the Republic and can be simply ignored by Zuma. The DA's Spokesperson, Portia Adams, said: "Unless he tenders his resignation, this recall is not worth the paper it is printed on". Adams says, the EFF's motion of No Confidence provisionally scheduled for the 22 February should therefore be brought forward to within this week in order for Parliament to remove Jacob Zuma.*
- *The body of a woman was found floating at North End Lake on Tuesday morning. Police Spokesperson, Captain Van Rensburg said police were called to the scene at about 7am. The woman, who is known in the area*

⁹ Appendix E: Bay FM's Programming Log Sheet (February Sample)

where she sleeps around the lake had no physical injuries. Mount Road Police are searching for her next of kin and anybody with information is asked to contact Sergeant Gavin Scheepers.

- Cyril Ramaphosa has taken up the reigns as Acting President of South Africa and will now have to deliver the State of the Nation Address after Jacob Zuma resigned on Wednesday night. Earlier in the day, the ANC confirmed that should Zuma not resign, he will be removed through a Motion of No Confidence in parliament on Thursday. The ANC then wanted Ramaphosa to be elected as the new President on Friday morning, this is meant to follow the SONA of Thursday evening. With Zuma's resignation, this now means that the motion-of-no-confidence falls away, but the plenary session will continue as planned and is expected to announce Zuma's exit. Ramaphosa could be then nominated. In a statement following Zuma's resignation, the ANC said it expected all its deployed members of parliament to cast a vote for the ANC President as the candidate the ANC will nominate for President of the Republic.*
- South Africa has a new first lady and not much is known about her. Tshepo Motsepe is the wife of President Cyril Ramaphosa. She is an accomplished medical doctor and is the Chairperson of the African Self Help trust which focuses on early childhood development and education. Dr Motsepe has worked in both public and private health practises. Together Motsepe and Ramaphosa have 4 children and maintain a very private lifestyle. She belongs to one of South Africa's wealthiest families, the Motsepes, she is the sister of South Africa's billionaire, Patrice Motsepe and Business Woman, Bridgette Radebe who is married to Minister in the Presidency, Jeff Radebe.*

The Authority's monitoring found an average of 16 minutes of news on weekdays only and not 40 minutes of news per day as per the requirement. The Authority also found that the Licensee's local news content fell well below the prescribed quota of 60% local news.

Bay FM failed to comply with clause 5.1.1 of its licence.

5.1.2 South African Music Content: 40%

Bay FM's programming log sheets indicate that the Licensee plays at least 45% South African Music content in its profile. The Authority's monitoring exercise revealed that the Licensee plays approximately 60% South African Music content in their programming.

The following local artists were identified as enjoying airplay on Bay FM:

DJ Gugu, Destruction Boyz, Mafikizolo, Dr Malinga, Busiswa, Prince KB, Babes woDumo, Elvis Blue, Mampintsha, DJ Tira, Naak Music, Kurt Darren, AKA, Nathi Mankayi, Musa Sukwene, Ringo Madlingozi, Casper Nyovest, Black Coffee ft Busie, Prince KB, La Soulmates, Arno Carstens, Amanda Black and many others.

Bay FM complies with clause 5.1.2 of the licence.

5.1.3 Talk vs Music: 40% Talk and 60% Music

The Authority's monitoring exercise identified that Bay FM's programming profile is dominated by music. Bay FM plays approximately forty minutes of music, between five and six five songs, in an hour.

This then translates to at least sixty six percent of music played during an hour's programming. In calculation, the Licensee's programming format is, at most times, 36% talk and 63% music.

Bay FM partially complies with clause 5.1.2 of the licence.

5.1.4 Language(s) of broadcast:

5.1.4.1 Afrikaans – 30%

5.1.4.2 IsiXhosa – 30%

5.1.4.3 English – 40%

The intention of this provision is so that the community does not feel discriminated against based on a language of broadcast used by a certain broadcaster. Having considered the language statistics of the Licensee's area of coverage, the Authority licensed Bay FM to use the 3 languages as stipulate above, as its languages of

broadcast. In monitoring the Licensee's programming profile, the expectation is that all languages as stipulated in the licence would be featured during broadcasts and in the overall programming schedule.

The Authority's monitoring exercise found that Bay FM's programming profile is dominated by the use of the English language. Approximately 80% of the Licensee's programming schedule features programmes in English and some Afrikaans programmes were found. No programmes in isiXhosa were found during monitoring and no news content was found in the other 2 languages of broadcast (Afrikaans and isiXhosa).

Bay FM failed to comply with clause 5.1.4 of the Licence.

Clause 5.2 of Bay FM's Schedule to the licence makes the following recommendations:

"The Licensee shall keep a log of programmes broadcast which must be submitted on a monthly basis to the Authority. A pro-forma of the log to be kept will be supplied by the Authority."

Bay FM endeavours to keep to the "monthly basis" submission. However, it is not always the case that the Licensee submits its monthly programming log sheets on a "monthly basis". In an event where the Licensee was late in its submissions/did not submit for a certain month; the Licensee would always make up for the missed months in its next report.

3.5 Promises of Performance

According to clause 8.1 of the Licence:

"60% of the Licensee's talk programming content shall be aimed at the promotion of literacy, education, community upliftment and informal programming. This will include informal education such as skills development."

In the year under review, the Authority's monitoring found that the Licensee generally schedules little talk compared to music. This comes as no surprise as

the Licensee's target market is the 16 to 24 years age group. While no programme was observed to promote literacy, the Authority found all the other characteristics prescribed by this clause in Bay FM's profile. All programmes scheduled by the Licensee carried some elements of education for the listener, uplifting the community and informal programming. However, the Authority's monitoring could not measure 60% of the Licensee's talk content as aimed at promoting all the features that the clause prescribes.

All programmes monitored could not satisfy the provisions of clause 8.1 of Bay FM's licence document.

Bay FM failed to comply with their promise of performance as read in clause 8.1 of the licence.

Clause 8.2 give the following prescription:

"The Licensee shall broadcast a broad-based programming that will involve the whole community."

In the year under review, the Authority's monitoring found that, while the Licensee's mandate is to address the 16 to 24 age group, all sectors and age groups within the Licensee's area of coverage were catered for. The overall programming profile was observed to not side line other age groups.

The Licensee complies with clause 8.2 of the licence.

4. REGULATIONS

4.1 Code on People with Disabilities

Clause 3.1 (a) of the Code on People with Disability of 2007 provides as follows:

"Broadcasting service Licensees must ensure that their services are made available and accessible to people with disability."

The Authority's general observation concludes that Bay FM services do not discriminate against people with disabilities. Content found during monitoring gave no evidence that the production of the said programmes was set out to

discriminate against people with disabilities. The Licensee's premises are also accessible to people with disabilities.

The Licensee complies with the above-mentioned Regulation.

4.2 Compliance Procedure Manual – Form 12A

The Licensee is required, in terms of the Compliance Procedure Manual Regulations, to submit a Form 12A which reports on all complaints received in the course of each financial year. In the year that is currently under review, Bay FM submitted its Form 12As indicating that the Licensee received no complaints.

The Licensee complies with the above-mentioned regulation.

4.3 ICASA South African Music Content Regulations

Regulation 3 of the ICASA South African Music Content Regulations 2016¹⁰ stipulates that:

"A holder of a community sound broadcasting service licence must ensure that after eighteen (18) months from the date of gazetting of these regulation, a minimum of 60%, increasing by 10% annually to reach 80% of the musical works broadcast in the performance period, consist of South African music and that such South African music is spread evenly throughout the performance period."

The Authority's monitoring exercise revealed that the Licensee plays approximately 60% South African Music content in their programming.

The following local artists were identified as enjoying airplay on Bay FM:

DJ Gugu, Destruction Boyz, Mafikizolo, Dr Malinga, Busiswa, Prince KB, Babes woDumo, Elvis Blue, Mampintsha, DJ Tira, Naak Music, Kurt Darren, AKA, Nathi

¹⁰ Appendix F: ICASA South African Music Content Regulations

Mankayi, Musa Sukwene, Ringo Madlingozi, Casper Nyovest, Black Coffee ft Busie, Prince KB, La Soulmates, Arno Carstens, Amanda Black and many others.

Bay FM complied with regulation 3 of the ICASA South African Music Content Regulations.

4.4 Regulations regarding Standard Terms and Conditions for Class Licensees

Regulation 2(1)(d) of the Regulations Regarding Standard Terms and Conditions for Class Licensees¹¹ provides two fundamental regulations that are constantly and continuously used to measure a Licensee's compliance. The two regulations are Regulation 2(1) and the sub clauses, along with Regulation 9 in its entirety.

In terms of the provisions made by Regulation 2(1) of the Regulations Regarding Standard Terms and Conditions for Class Licensees; Bay FM has new management and contact person. While there has been no break in the communication between the Authority and Bay FM, the Licensee failed to submit a Form L to affect a notification in terms of change of Contact Person. The Licensee's outgoing management was aware of what needed to be done in order for the Authority to effect the changes.

Bay FM tries by all means to submit all information requested of them by the Authority in terms of Regulation 9. In an event where the Licensee cannot meet the required deadline, they make it a point to ask for an extension to be allowed to submit.

Bay FM failed to comply with regulation 2 (1) (d) of the Standard Terms and Conditions for Class Licensees.

¹¹ Appendix G: Regulations regarding the Standard Terms and Conditions

5. CONCLUSION

The Authority's findings measured against Bay FM's submissions indicate that the Licensee may be submitting log sheets with wrong information. In some cases, Bay FM was found to have short changed themselves in terms of complying with quotas while in other submissions they have over rated their compliance. Bay FM has failed to comply with most licence conditions and this cannot be taken lightly. There has been a change of Management at the Licensee and it may happen that the failure to record information reflective of their profile on the log sheets is hugely owed to misinformation on the part of the new Management.

The Authority will schedule a workshop for the new management of Bay FM early in the new financial year and another report will be drafted in the 2019/2020 year to see if the Licensee did correct the failures recorded in this report. Bay FM's licence is due for renewal in July and if the Licensee fails to correct the non-compliances by then, the Authority should suspend the Licence until such time that the Licensee corrects the failures.

6. TERMS OF REFERENCE

Appendix A: Bay FM's Broadcasting Service Licence

Appendix B: Renewal Letter sent to Bay FM

Appendix C: Bay FM's Frequency Spectrum Licence

Appendix D: Authority's letter dated 20 February 2018

Appendix E: Bay FM's February 2018 Log Sheet

Appendix F: Regulations on South African Music Content

Appendix G: Regulations regarding the Standard Terms and Conditions